

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David H. Sitrick )  
 )  
 For: SYSTEM AND METHODOLOGY )  
 FOR MUSICAL COMMUNICATION )  
 AND DISPLAY )  
 )  
 Serial Number: 09/492,218 )  
 )  
 Filed: January 27, 2000 )  
 )  
 Examiner: M. Fletcher )  
 )  
 Art Unit: 2837 )  
 )  
 Attorney Docket: STD 1757 )

DECLARATION OF DAVID H. SITRICK UNDER 37 CFR 1.131

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

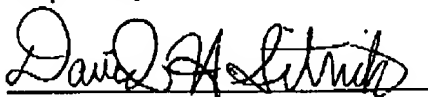
I, David H. Sitrick, hereby declare and say that:

- 1) I am an attorney at law and a member of the firm of Sitrick & Sitrick whose offices are located at 8340 N. Lincoln Avenue in Skokie, Illinois. I am registered to practice before the United States Patent & Trademark Office, having been awarded Reg. No. 29,349. I have power of attorney to prosecute the above application. I am also the sole inventor on the above-referenced patent application. This application was filed on January 27, 2000, and issued on March 17, 1998.
- 2) On an Office Action for the above application, dated October 21, 2003, the Examiner cited the Lemelson et al. U.S. patent no. 5,823,788 as a basis of rejection under 35 USC section 103. The Lemelson et al. patent has a priority filing date of November 13, 1995 and an issue date of October 20, 1998, and is thus not prior art, and the present Applicant can and hereby does swear back of the Lemelson et al. patent as a reference, by means of this Declaration filed pursuant to Rule 131 (37 CFR 1.131) and the MPEP.
- 3) The above referenced patent application of the present Applicant has a priority filing date of July 10, 1996 and an issue date of March 17, 1998.

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- 4) The following facts establish conception of the invention prior to the effective date of the Romero et al reference coupled with due diligence from prior to November 13, 1995 to the filing of the application on July 10, 1996.
- 5) Attached hereto as Exhibit A is a printed copy of a first draft of the patent specification (version one), filename: [1564 PAT APP.SC1], dated as last modified on October 23, 1995. (13 pages)
- 6) Attached hereto as Exhibit B is a printed copy of the computer file directory of early drafts of the specification and claims, including above-identified Exhibit A; showing continuous due diligence from October 23, 1995 through the date of filing of the priority date of July 10, 1996. (1 page)
- 7) By this Declaration, the rejection of above referenced patent application as based upon the Lemelson et al. U.S. patent no. 5,823,788 is hereby overcome in accordance with 37 CFR 1.131, by swearing back of the reference.
- 8) I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and, further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,



David H. Sitrick  
Attorney for Applicant  
Registration No. 29,349

January 21, 2004

SITRICK & SITRICK  
8340 N. Lincoln Ave., Suite 201  
Skokie, IL 60077  
Telephone Number: (847) 677-4411  
Facsimile Number: (847) 677-4656